December 1, 2017

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: *Assessment and Collection of Regulatory Fees for Fiscal Year 2017,* Report and Order and Further Notice of Proposed Rulemaking, FCC 17-111, MD Docket No. 17-134 (*FY 2017 Report and Order and FNPRM*)

Dear Ms. Dortch:

The Satellite Industry Association ("SIA")[1] submits these comments in response to the above-captioned *Further Notice of Proposed Rulemaking*, which seeks input on proposed changes to the framework for assessing International Bearer Circuit ("IBC") regulatory

[1] SIA Executive Members include: The Boeing Company; AT&T Services, Inc.; EchoStar Corporation; Intelsat S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; Ligado Networks; Lockheed Martin Corporation; Northrop Grumman Corporation; OneWeb; SES Americom, Inc.; Space Exploration Technologies Corp.; SSL; and ViaSat, Inc. SIA Associate Members include: ABS US Corp.; Analytic Graphics Inc.; Artel, LLC; Blue Origin: DigitalGlobe Inc.; DataPath Inc.; DRS Technologies, Inc.; Eutelsat America Corp.; Global Eagle Entertainment; Globecomm; Glowlink Communications Technology, Inc.; Hawkeye360; Hughes; Inmarsat, Inc.; Kymeta Corporation; L-3 Electron Technologies, Inc.; O3b Limited; Panasonic Avionics Corporation; Planet; Semper Fortis Solutions; Spire Global Inc.; TeleCommunication Systems, Inc.; Telesat Canada; TrustComm, Inc.; Ultisat, Inc.; and XTAR, LLC. For more information, visit www.sia.org.

This submission is supported by all SIA members except for AT&T who abstains from participation.

1200 18th Street NW, Suite 1001, Washington, D.C. 20036
Phone: 202-503-1560 Fax: 202-503-1590 www.sia.org

fees on satellite operators, including the possible replacement of satellite IBC fees with an assessment on international section 214 authorizations. SIA strongly opposes using a tier-based system developed to address extremely high-capacity submarine cable facilities to calculate fees for the tiny proportion of IBCs offered via satellite. Instead, the Commission should replace the satellite IBC fee with an assessment on international section 214 authorizations or simply retain the current assessment method for satellite IBCs.

Satellite operators are not subject to regulation with respect to their provision of IBCs

The *Communications Act* requires the allocation of regulatory fees to be "adjusted to take into account factors that are reasonably related to the benefits provided to a payor of the fee by the Commission's activities." Satellite operators pay regulatory fees for earth stations, geostationary orbit space stations and non-geostationary orbit space stations that are licensed and operational. These fees, which are substantial,[2] reflect the work done by International Bureau FTEs in overseeing and administering the Commission's rules and policies governing space and earth station operations.

In contrast, satellite operators are not subject to regulation with respect to their provision of satellite IBCs. SIA noted earlier this year that to its knowledge the only Commission staff activity related to satellite provision of IBCs involved collecting annual circuit capacity reports filed by satellite operators and incorporating that data in the total circuit information released by the Commission, a task undertaken solely to provide information for the calculation of satellite IBC regulatory fees.[3] SIA observed that the Commission had created "an entirely circular scheme" in which it required satellite operators to submit circuit capacity reports in order to assist it in collecting regulatory fees and then used that work to justify continuing to impose the IBC fees.[4] In a subsequent decision, the Commission put a stop to this cycle, admitting that circuit

[2] For FY2017, the annual fees are $140,925 per geostationary orbit space station and $135,350 per non-geostationary orbit space station.
[3] Comments of the Satellite Industry Association, MD Docket No. 17-134, filed June 22, 2017 ("SIA FY 2017 Comments") at 4.
[4] *Id.* at 4-5.

1200 18th Street NW, Suite 1001, Washington, D.C. 20036
Phone: 202-503-1560 Fax: 202-503-1590 www.sia.org

data was collected from satellite operators only for regulatory fee collection purposes and revising its rules to "discontinue collecting" satellite circuit information.[5]

This regulatory change eliminated the last possible cost-based justification for assessing IBC regulatory fees on satellite operators. Now that they have been relieved of the requirement to file circuit status reports, satellite operators will no longer generate any Commission costs associated with their provision of IBCs.

Satellites' proportion of total IBCs is miniscule

Satellites offer substantial capacity over the U.S., but much of this capacity is used for domestic services. The Commission has expressly recognized that satellite IBCs represent a miniscule portion of total IBCs. Specifically, based on FY 2015 data, the Commission observed that satellites provided only 81,157 64 kbps international circuits, representing 0.37% of the nearly 22 million combined 64 kbps IBCs offered by satellite and terrestrial networks.[6] Even that percentage vastly overstates the role of satellite IBCs overall, as it does not take into account submarine cable capacity, which dwarfs the combined satellite and terrestrial international capacity. Indeed, the FY 2015 Circuit Report indicates that submarine cables provided 91,242 Gbps internationally,[7] compared to roughly 1404 Gbps internationally for satellite and terrestrial networks combined. In short, of the total 92,644 Gbps capacity subject to IBC fees for FY 2015, only 1.5% of that total came from satellite and terrestrial international circuits and the remaining 98.5% was international submarine cable capacity. Thus, looking at the IBC category as a whole, satellite circuits are 0.37% of 1.5%, which comes out to 0.0056% of the total.

---

[5] *Section 43.62 Reporting Requirements for U.S. Providers of International Services 2016 and Biennial Review of Telecommunications Regulations*, Report and Order, FCC 17-136 (rel. Oct. 24, 2017) at ¶ 31.

[6] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, 32 FCC Rcd 4526 (the "*FY 2017 NPRM*") at ¶ 26 & n.79, *citing* the International Bureau's 2014 U.S. International Circuit Capacity Report issued in January, 2016 (the "FY 2015 Circuit Report") at 3.

[7] FY 2015 Circuit Report, Exhibit 1 at T-9.

1200 18th Street NW, Suite 1001, Washington, D.C. 20036
Phone: 202-503-1560 Fax: 202-503-1590 www.sia.org

Calculating satellite IBCs imposes substantial burdens

Given the minimal international capacity provided by satellites and the fact that satellite operators already pay substantial space and earth station regulatory fees, the *FY 2017 NPRM* asked whether the satellite IBC fee should be eliminated.[8] SIA supported elimination of the regulatory fee applicable to satellite IBCs, arguing that the costs to satellite operators of determining the number of circuits subject to the fee are significant and unjustified.[9]

Indeed, satellite operators have no operational reason to track active IBCs, and elements of the definition of IBC, such as "international" and "active" pose special challenges for satellite operators. A satellite operator typically has no basis for knowing whether its customer is using satellite capacity for U.S. international service, as opposed to U.S. domestic service or wholly foreign service. Furthermore, satellite capacity is typically sold on a full or fractional transponder basis, and operators generally have no need to track whether their customers are actually using capacity they have purchased at a particular time. In addition, transponders providing occasional use satellite service may have multiple customers, and multiple periods of down time in any given day. Thus, determining whether capacity was actively being used for an international service on a specific day may require extensive investigation.

These costs of determining active satellite IBCs are vastly out of proportion to the contribution made by satellite IBC fees to the Commission's regulatory fee revenues. Specifically, SIA noted that the 81,157 64 kbps international satellite-provided circuits identified in the FY 2015 Circuit Report, charged at $0.03 per circuit, would have generated revenue of just $2,443.71.[10]

[8] *FY 2017 NPRM* at ¶ 26.
[9] SIA FY 2017 Comments 5 n.18 (citing an SES estimate that calculation of its IBC regulatory fees takes at least ten hours of in-house counsel time alone, not including the time required to collect the data underpinning the calculation).
[10] *Id.*

1200 18th Street NW, Suite 1001, Washington, D.C. 20036
Phone: 202-503-1560 Fax: 202-503-1590 www.sia.org

A tier-based approach to satellite IBC fees would be manifestly unfair and would not reduce the administrative burden of calculating satellite IBCs

Despite this evidence, the Commission declined to eliminate the satellite IBC fee for FY 2017, and instead suggested that adopting a tier-based "flat fee methodology for terrestrial and satellite IBCs should significantly reduce any burden of collecting data" for the IBC calculation.[11] However, there is no basis for this assumption. Moving to a tiered approach would not make it any easier for satellite operators to calculate their fees, as they would still have to determine how many active international circuits they provided at the designated time in order to figure out the applicable tier.

More importantly, a tiered approach would result in massive overcharges to satellite operators. The lowest tier set forth in the FNPRM for submarine cable systems is 1,000 Gbps of capacity, and the FNPRM proposes using the same tiers for satellite IBCs.[12] The FY 2015 total of 81,157 64 kbps of international circuits provided by all satellite operators represents a tiny fraction of this amount and was supplied by multiple satellite operators. Thus, even at the lowest tier, each satellite operator paying IBC fees would be charged an amount hundreds of times what would be due from the satellite industry as a whole under the current assessment system based purely on actual international circuits in use. Depending on the number of satellite operators paying the bearer circuit fee, this proposal could result in the satellite industry paying fees thousands of times greater than it should relative to actual satellite IBCs in use. Such a result is clearly arbitrary and capricious – particularly given the Commission's inquiry just six months ago whether to eliminate the IBC regulatory fee for satellite providers of IBCs.

[11] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-111 (rel. Sept. 5, 2017) (the "*FY 2017 Order and FNPRM*") at ¶ 36.

[12] *FY 2017 Order and FNPRM* at ¶¶ 46-47.

1200 18th Street NW, Suite 1001, Washington, D.C. 20036
Phone: 202-503-1560 Fax: 202-503-1590 www.sia.org

Furthermore, there is simply no support in the record for switching to a tier-based system for satellite IBCs. Instead, the comments focus only on whether the Commission should change the framework for collection of terrestrial IBCs.[13]

In short, moving from the existing satellite IBC collection method to a tier-based approach would be manifestly unfair to satellite operators and would not simplify the calculation of the fee and the associated regulatory burden. Therefore, should the Commission decide to extend the tier-based approach to terrestrial IBCs, satellite IBCs should be exempt from the fees, given the tiny fraction of IBCs provided over satellite and the disproportionate costs of calculating satellite IBCs.

Assessment of a fee on international section 214 authorizations has distinct advantages over both the existing system and a tier-based system

An alternative approach discussed in the *FY 2017 Order and FNPRM* is the assessment of a fee on each international section 214 authorization.[14] This approach has a number of distinct advantages over both the existing system of applying regulatory fees to satellite IBCs and a tiered approach. First, a section 214-based fee is easy to determine and enforce. Second, unlike satellite operators, holders of section 214 authority are directly involved in international common carrier services and benefit from associated Commission regulation and, in some cases, may not otherwise be subject to any regulatory fees.

Therefore, replacing the satellite IBC fee with a flat fee on every international section 214 authorization that supports international telecommunications or VoIP service connected to the PSTN would ensure a consistent link between regulatory fees and the drivers of regulatory costs, while reducing the administrative burden.

If the Commission declines to replace satellite IBCs with a section 214-based system, however, it should simply maintain the status quo by continuing to assess satellite IBC regulatory fees on a per-circuit basis.

[13] *See, e.g.*, Comments of Level 3, MD Docket No. 17-134 (filed June 22, 2017).
[14] *FY 2017 Order and FNPRM* at ¶ 48.

1200 18th Street NW, Suite 1001, Washington, D.C. 20036
Phone: 202-503-1560 Fax: 202-503-1590 www.sia.org

Conclusion

For the foregoing reasons, SIA urges the Commission to replace the current satellite IBC fee with an assessment on international section 214 authorizations. Nothing in the record supports application of a tier-based approach to satellite IBC fees, and if such an approach is adopted for terrestrial IBCs, satellite IBCs should be exempt in light of the extremely small fraction of IBCs provided over satellite, the disproportionate costs of calculating satellite IBCs, and the absence of regulatory costs and regulatory benefits attributable to providers of satellite IBCs. If satellite IBC fees are not eliminated or replaced, they should continue to be assessed using the existing framework.

Respectfully submitted,

/s/

SATELLITE INDUSTRY ASSOCIATION

Tom Stroup, President
1200 18th St., N.W., Suite 1001
Washington, D.C. 20036

1200 18th Street NW, Suite 1001, Washington, D.C. 20036
Phone: 202-503-1560 Fax: 202-503-1590 www.sia.org